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IN THE

Supreme Court of the United States

NO. 72-821

DIANE PEACOCK,
PETITIONER

—VS—

STATE OF ALABAMA,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Alabama is reported at 48 Ala. App. ____, 265 So.2d 175 (June 13, 1972). A Petition For Certiorari to the Court of Criminal Appeals was denied without opinion by the Alabama Supreme Court, ____ Ala. ____, 265 So.2d 180 (August 3, 1972).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

WHETHER THE COURT OF CRIMINAL APPEALS OF ALABAMA VIOLATED PETITIONER'S CONSTITU-

TIONAL RIGHT TO A FAIR TRIAL BY HOLDING THAT THE GOVERNOR'S WARRANT FROM THE DEMANDING STATE AND THE SUPPORTING DOCUMENTS ATTACHED THERETO WERE ADMISSIBLE AS EVIDENCE EVEN THOUGH SUCH WARRANT AND DOCUMENTS WERE FASTENED TOGETHER BY STAPLES.

STATUTES INVOLVED

Title 15, Sections 50 and 52, Code of Alabama 1940, Recompiled 1958, and Title 18, Section 3182, United States Code Annotated, are found in the Appendix at pages 9 and 10.

STATEMENT OF THE CASE

Petitioner was arrested by the Sheriff of Jefferson County, Alabama upon a rendition warrant issued by the Governor of Alabama ordering her return to the State of Maryland to answer an indictment charging her with the crime of forgery, uttering, larceny after trust. The basis of the issuance of the rendition warrant by the Alabama Governor was the receipt by him of a Governor's Warrant from the State of Maryland, to which warrant were stapled several supporting documents, including the indictment aforementioned.

Petitioner filed a Writ of Habeas Corpus in the Jefferson County Circuit Court challenging her detention. The Writ was denied and Petitioner appealed to the Court of Criminal Appeals where the decision of the Circuit Court was affirmed on June 13, 1972. On June 30, 1972, an Application For Rehearing was denied by that same Court and Petitioner filed a Petition For Writ of Certiorari to the Alabama Court of Criminal Appeals. That petition was denied without opinion by the Alabama Supreme Court on

August 3, 1972. On August 17, 1972, the Court of Criminal Appeals granted a Motion to Stay Execution of Sentence.

On the hearing in the Circuit Court of Jefferson County, the evidence tended to show that Petitioner was present in the State of Maryland at the time of the commission of the crime, and that the proceedings had not been instituted to collect a debt. The evidence also showed that Petitioner had admitted the crime, attempted to make restitution, and, failing to do so, had fled to the State of Alabama. It was also shown that on the morning of the hearing, one of the secretaries in the Office of the District Attorney in Birmingham took the requisition warrant and supporting papers sent to Alabama by the Governor of Maryland, removed the staples therefrom, made a copy of each sheet, reassembled them in their proper order, and restapled them. The trial judge heard this testimony, inspected the papers, and admitted them into evidence. The Governor's Warrant and supporting papers were duly authenticated.

ARGUMENT

Petitioner makes much over the fact that the Governor's Warrant and supporting papers were "merely" stapled together. She devotes a goodly portion of her argument to what might have happened to these papers between the time they left the Maryland Governor's desk and the time they were offered in evidence in the Circuit Court of Jefferson County, Alabama. Petitioner is, however, unable to show a single deletion or addition to the papers. A separation of the papers was shown, but it was also shown that the papers were separated merely to make xerox copies of them, and that they were restapled in the same order as they were in before the staples were removed.

The State of Alabama would respectfully contend that staples do, in fact, provide a reasonably secure means of insuring that no deletions or additions are made with regard to a group of papers. Each time a staple is inserted, it leaves a hole in the paper, and, thus, the papers would show in and of themselves that they had been tampered with. The only way to avoid this would be to replace a staple in the exact same position, utilizing the exact same holes as were made by the previous staple.

Petitioner argues that the papers should be fastened together in such a manner as to insure that they remain intact. The State would respectfully contend that if this rule were applied literally, then no such group of papers would ever be admissible as evidence in a court of law, for it would be impossible to guard against tampering in such a way as to "assure" the authenticity of all the papers beyond any doubt at all.

The State of Alabama respectfully contends that the issue is not one of absolute assurance, but of reasonableness. If the court in Alabama is reasonably satisfied that the papers are in the same condition as they were in when they left the Maryland Governor's Office, then the logical rule would be that they should be admitted into evidence. The mere possibility that the papers have been tampered with should not be enough, in and of itself, to preclude their admissibility. If documents are to be ruled inadmissible because of mere speculation as to their authenticity, then it can truthfully be said that no document would qualify.

Petitioner relies on the cases of *Aldio v. State*, 42 Ala. App. 653, 177 So.2d 107, *Griffin v. State*, 43 Ala. App. 237, 187 So.2d 293, and *Meadows v. State*, 38 Ala. App. 319, 82

So.2d 811, to support her contention that the documents in question should not be admitted into evidence. An analysis of these cases, however, reveals that they do not support Petitioner's contentions.

In both *Aldio* and *Meadows*, there was no request for requisition made by the Governor of the demanding state, nor were the supporting documents authenticated as required by Title 15, Section 50, Code of Alabama 1940, Recompiled 1958. The question in *Griffin* was whether the papers accompanying a requisition warrant were properly authenticated. The Alabama Court of Criminal Appeals held that these papers were sufficiently authenticated when the Governor of the demanding state has authenticated them.

The Maryland Governor's demand for extradition was in proper form. Title 15, Section 50, Code of Alabama 1940, Recompiled 1958, states that no demand shall be recognized by the Alabama Governor unless it is in writing, includes a copy of the indictment which charges the person with committing a crime, and is authenticated by the demanding authority.

Title 15, Section 52, Code of Alabama 1940, Recompiled 1958, states that a requisition warrant will not be issued unless the documents presented by the demanding authority show that the accused was present in the demanding state at the time the crime was committed, that he thereafter fled the state and is now in Alabama, and that he is charged by indictment with the commission of the crime.

The State respectfully submits that the requirements of Sections 50 and 52 have been satisfied. The supporting papers which were attached to the Maryland Governor's demand were not necessary for the Alabama court to find that

extradition was proper. All that is required under the Alabama statutes is that the indictment be included. In the instant case, the indictment was properly authenticated and the Maryland Governor referred specifically to it in his request.

It should be noted that the Federal law on the subject is much the same as the Alabama law. Title 18, Section 3182, United States Code Annotated, makes much the same requirements as the Alabama laws, and, under the facts, it is clear that these requirements were also met.

The Respondent respectfully submits that the opinion of the lower court was correct. The admission of the supporting papers in no way violated Petitioner's right to a fair trial.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition For a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard F. Calhoun, one of the Attorneys For Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29 day of Dec, 1972, I served copies of the foregoing Brief on Honorable Arthur Parker, Attorney for Petitioner, by placing said copy in the mail, postage prepaid, and properly addressed to said attorney of record, as follows:

210 Frank Nelson Building
Birmingham, Alabama 35203

Richard F. Hall

RICHARD F. CALHOUN
Assistant Attorney General
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APPENDIX

TITLE 15, SECTION 50, CODE OF ALABAMA 1940 RECOMPILED 1958

§ 50. **Form of demand.**—No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth. (1931, p. 559.)

TITLE 15, SECTION 52, CODE OF ALABAMA 1940 RECOMPILED 1958

§ 52. **What papers must show.**—A warrant of extradition must not be issued unless the documents presented by the executive authority making the demand show that the accused was present in the demanding state at the time of the commission of the alleged crime, and that he thereafter fled from that state, and is now in this state, and that he is lawfully charged by indictment or by an information filed by a prosecuting officer and supported by affidavit to the

facts, or by affidavit made before a magistrate in that state, with having committed a crime under the laws of that state, or that he has been convicted of crime in that state and has escaped from confinement or broken his parole. (1931, p. 559.)

TITLE 18, SECTION 3182 UNITED STATES CODE ANNOTATED.

§ 3182. Fugitives from State or Territory to State, District or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

June 25, 1948, c. 645, 62 Stat. 822.